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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 450

ROBERT L. DOUGLAS, ALBERT R. GUNDECKER,
EARL KALKBRENNER, CARROL CHRISTOPHER,
VICTOR SWANSON, NICHOLAS KODA, CHARLES
SEDERS, ROBERT LAMBORN and ROBERT
MURDOCK, Jr.

Petitioners

v.

CITY OF JEANNETTE (Pennsylvania), a municipal
corporation, and JOHN M. O'CONNELL, individually and
as Mayor of City of Jeannette (Pennsylvania)

Respondents

ON CERTIORARI

TO THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT

PETITIONERS' BRIEF

HAYDEN C. COVINGTON

Attorney for Petitioners

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Opinions Below

• The opinion of the United States Circuit Court of Appeals is reported in 130 F. 2d 652, and that of the United States District Court appears in 30 F. Supp. 32. The companion case of *Reid et al. v. Brookville, et al.*, is reported in 39 F. Supp. 30.

Jurisdiction

Section 240 (a) of the Judicial Code [28 U. S. C. A. 347 (a)] sustains jurisdiction of this Court.

The Statute

The legislation, constitutionality and validity of which, as construed and applied to petitioners, is here drawn in question, is an ordinance of the City of Jeannette, Pennsylvania, known as Ordinance Number 60 and which reads as follows:

City of Jeannette, Pa.

Ordinance No. 60

An Ordinance regulating the canvassing for or soliciting of orders for goods, paintings, pictures, wares or merchandise of any kind within the Borough of Jeannette, and the delivery of such articles under orders so obtained or solicited and requiring all person or persons so engaged in canvassing, soliciting or delivering, to first procure from the Burgess a license to transact said business, and also regulating the hawking, vending of fruits and other merchandise upon the streets by public outcry or by solicitation and requiring all person or persons thus engaged to first obtain a license from the Burgess.

Be It Ordained and enacted by the Borough of Jeannette in Council assembled and it is hereby ordained and enacted by the authority of the same.

Section I. That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact such business and shall pay to the Treasurer of said Borough therefor the following sums according to the time for which said license shall be granted.

For one day \$1.50, for one week seven \$7.00 dollars, for two weeks twelve \$12.00 dollars, for three weeks twenty \$20.00 Dollars, provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette.

Section II. That all persons huckstering, peddling, or selling fruits, goods or other merchandise upon the streets of said Borough by outcry or solicitation of the people upon the streets or thoroughfares of said Borough shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefor, the sum of ten \$10.00 Dollars per day. Any person or persons failing to obtain a license as required by this ordinance shall, upon conviction before the Burgess or Justice of the Peace of said Borough forfeit and pay a fine not exceeding one hundred \$100.00 Dollars, nor less than the amount required for the license for such person or persons together with the costs of suit, and in default of payment thereof, the defendant or defendants may be sentenced and committed to the

Borough lock-up for a period not exceeding five (5) days or to the County Jail for a period not exceeding thirty (30) days.

Adopted by the Town Council of the Borough of Jeannette this first day of March, A. D. 1898.

D. E. CARLE, President of Council.

Attest: GEO. S. KIRK, Secretary.

I, J. CLAIRE MANSON, City Clerk, of the City of Jeannette, Pennsylvania, hereby certify that the foregoing is a true and correct copy of Ordinance No. 60 of the Borough of Jeannette (now the City of Jeannette), Pennsylvania.

J. CLAIRE MANSON, City Clerk.

[Seal] [R. 138]

Statement

Petitioners brought this action in the United States District Court for the Western District of Pennsylvania, under the Civil Rights Act as amended in 1871 [8 U. S. C. A. s. 43] to restrain interference by respondents with petitioners' exercise of their fundamental personal right to distribute literature and simultaneously receive money contributions to aid in printing and distributing more like literature from house to house and upon the streets within the City of Jeannette, alleging that respondents had repeatedly harassed, arrested, prosecuted, unlawfully convicted and unlawfully forced petitioners and other of Jehovah's witnesses to appeal said convictions to the Court of Quarter Sessions of Westmoreland County, thence to the Superior and the Supreme

Courts of the Commonwealth; all of which greatly damaged and injured petitioners and other of Jehovah's witnesses and frustrated and practically stopped the lawful activity of Jehovah's witnesses in the exercise of their rights of freedom of speech and of press and freedom to worship ALMIGHTY GOD, causing petitioners to suffer irreparable injury and damage in future unless enforcement of said ordinance was enjoined. R. 3-14.

FACTS.

Each of the petitioners is an ordained minister of Jehovah God, representing the Watch Tower Bible and Tract Society, which Society is a corporation created under law of Pennsylvania for the purpose of disseminating Bible truths in various languages by means of tracts, books, booklets and other lawful means. (R. 23) That Jehovah's witnesses are God-fearing men and women, ordained ministers of the gospel, wholly and entirely devoted to the service of ALMIGHTY GOD and have covenanted with Jehovah to serve Him and to do His will and to follow in the footsteps of Christ Jesus by preaching from house to house; that the Watch Tower Bible & Tract Society is used by Jehovah's witnesses as publishers to assist them in disseminating Bible truths and to preach the gospel.

Petitioners and all other of Jehovah's witnesses possess credentials showing that they are duly ordained to preach the gospel and to represent the Watch Tower Bible & Tract Society. See Petitioners' Exhibit No. 38. (R. 24) That Jehovah's witnesses throughout the earth are organized into groups where they as groups and as individuals co-operate with one another for the purpose

of preaching the gospel and taking to the people information concerning God's kingdom in an efficient and orderly manner. That Jehovah's witnesses visit the people in different communities at regular intervals to call upon them with the message of the Kingdom, using phonographs to present the books and booklets and to encourage and stimulate home Bible study. That each one of Jehovah's witnesses is an ordained minister of ALMIGHTY GOD. That Jesus Christ taught publicly on the streets and from house to house, and that His apostles also taught publicly and preached from house to house, and that all true followers of Jesus Christ in the present day are commissioned, anointed and ordained as ministers of Jehovah God for the sole purpose of preaching the gospel from house to house and publicly. Isaiah 61: 1, 2; Isaiah 43: 9-12; Matthew 10: 7-12; Matthew 24: 14; Acts 20: 20; 1 Peter 2: 9, 21; 1 Corinthians 9: 16. That in order to do the work quickly and efficiently books and booklets in various languages are employed instead of conversation, so as to save time and enable people at their leisure to study in their homes and learn for themselves. That the work of Jehovah's witnesses has been carried on for many years in Jeannette; that in March, 1939, while Jehovah's witnesses were distributing literature from house to house and receiving money contributions they were arrested and warned to discontinue the work or otherwise they would be prosecuted under Ordinance No. 60.

Thereafter, on April 2, 1939, petitioners delivered a letter to the police and mayor of Jeannette, explaining the nature of their work and showing why the ordinance did not apply to them; which said letter appears in the record as follows (R. 28-9):

LETTER TO JEANNETTE POLICE

[Petitioners' Exhibit 2]

Southwestern Pennsylvania Division

JEHOVAH'S WITNESSES

907 Middle Street, N. S.
Pittsburgh, Pa.
Fairfax 6776

April 2, 1939.

To Police Department,
Attention Chief of Police,
Jeannette, Pennsylvania.

May it please you to notice that in obedience to the command of Almighty God, JEHOVAH, and under the leadership of His King Christ Jesus, we whose names and addresses appear on the appended list are engaged regularly in the worship of the Almighty God by preaching the gospel of Jehovah's kingdom. This we do, as Jehovah's witnesses, by going from house to house and exhibiting to people of good will that message in printed form, as commanded by Jehovah.

The purpose in sending this letter and list of names is that Jehovah's witnesses may be identified to you, and that there may be no occasion for misunderstanding on your part as to the object of our presence and work in your community.

In your community there are those who desire to know the purposes of Jehovah. It is the will of Jehovah that such persons shall be informed. In His Word, the Bible,

He commands His witnesses to find those people and deliver His message to them. His commands to His witnesses are written at Isaiah 61:1-3; Ezekiel 9:4; Matthew 24:14; Matthew 10:7-15; Luke 10:5, 6; John 18:37; Acts 20:20; 1 Peter 2:21.

From time to time, therefore, some of us shall do this work among the people of your community.

One or more sound cars, equipped to present the same message contained in short Bible talks, with appropriate music, at times accompany those who do this work. Programs without cost to the people are put on at public parks, institutions and other places.

We who engage in this work come to your community not to canvass or solicit, nor to peddle goods, wares or merchandise. We do not ask for a permit, for the reason that the Almighty Creator, JEHOVAH, whose law is above all laws, commands us, as His witnesses, to preach the gospel of His kingdom; therefore to ask any human creature for a permit would be an insult to Jehovah and a violation of our covenant with Him, and would result in our everlasting destruction.—Acts 3:22, 23; Acts 4: 19, 20; Acts 5: 34-39.

We and each of us are the duly accredited representatives of the Watch Tower Bible & Tract Society, of Brooklyn, a corporation formed for the purpose of disseminating Bible truths among the people.

[Here follows list of names and addresses mentioned in paragraph 1 of above letter, including names of most of petitioners and also of more than fifty other persons.]

On the date of delivery of the foregoing letter several of Jehovah's witnesses were again arrested and this time complaint was filed in the Mayor's Court of the City of Jeannette, charging them with violation of said ordinance for failure to purchase a peddler's license. On such date petitioners' representative Hessler advised respondent Mayor O'Connell that Jehovah's witnesses had no objection to the ordinance as a commercial ordinance, but objected to its being misapplied to their work of preaching the gospel. R. 30.

That on April 2, 1939, twenty-one of Jehovah's witnesses were arrested, and 18 were tried and convicted and forced to appeal to the Court of Quarter Sessions. That on a subsequent appeal to the Pennsylvania Superior Court from the Court of Quarter Sessions petitioners' failure to have attached to original appeal papers a certified copy of the mayor's transcript resulted in dismissal of that appeal [137 Pa. S. C. 445; 9 A. 2d 179], and from there the case was taken to the Supreme Court of the Commonwealth [137 Pa. S. C. XXXIII] and then to the Supreme Court of the United States, where certiorari was denied [309 U. S. 674, 699], because decided on non-federal ground. R. 101-102.

That since April, 1939, to wit, in February, 1940, there were a number of prosecutions and convictions of Jehovah's witnesses under said ordinance and appeals to the Court of Quarter Sessions, where those cases are now pending. That there have been more than thirty (30) arrests since the original twenty-one arrests. R. 9, 32, 38, 41.

Petitioners' Exhibits 3 to 10 inclusive were books published by the Watch Tower Bible & Tract Society and distributed by Jehovah's witnesses in Jeannette.

Petitioners' Exhibits 11 to 36 inclusive were booklets and pamphlets distributed by Jehovah's witnesses in Jeannette.

The manner in which the work was carried on in Jeannette is that Jehovah's witnesses visited the homes, rang the bell or knocked, and when a person came to the door the caller said, "I represent the Watch Tower Bible & Tract Society" or "I am one of Jehovah's witnesses, and we have very important information for you in the form of a phonograph record which I will play, and it will take only a few minutes for you to hear it." Whereupon the caller demonstrated with a portable phonograph and played Petitioners' Exhibit 37. At conclusion of playing of phonograph record the householder was asked whether he liked the record, and then a card was presented for him to read, explaining how he may obtain "The Watchtower", published twice a month, and if he did not care to take "The Watchtower" then attention was called to the fact that one of the bound volumes could be secured on a contribution of twenty-five cents. That on the occasion of the first arrests Jehovah's witnesses were distributing the two booklets "Face the Facts" and "Fascism or Freedom", taking a contribution of five cents from persons receiving the two booklets, and to any who did not care to contribute and desired the booklets copies were given free. R. 35.

That the reason Jehovah's witnesses did not apply for a permit or purchase a license under the ordinance was because they were *not* peddlers but ministers of Jehovah God doing this work in obedience to His explicit command, and for them to ask for a permit to do what Jehovah has commanded would be an insult to the Creator, as His law is supreme and above all human

law. That repeatedly and on several occasions after April 2, 1939, throughout the year 1939 and throughout the year 1940, up to the time that this action was filed, Hessler had many conversations with respondent O'Connell, imploring with him not to interfere with Jehovah's witnesses and to discontinue arresting them under the ordinance; but that the mayor always insisted that the law was valid and that they would continue to enforce it as long as Jehovah's witnesses distributed literature from house to house in Jeannette and accepted money contributions.

That the repeated arrests and prosecutions have curtailed the work of Jehovah's witnesses, intimidated people of good-will who reside in Jeannette, causing such persons to be afraid to accept any literature offered by Jehovah's witnesses, and caused the company of Jehovah's witnesses to diminish and move away from the community and avoid working in the community.

That the expense of defense and appeal of the various cases has exceeded \$1,700.00 (R. 67-79), in addition to hundreds of dollars of expense incurred by individuals for travel costs and inconveniences and damage through loss of jobs and reputation. That the Watch-Tower Bible and Tract Society receives 5¢ each on books sent to the full-time worker. If a contribution of 25¢ is received there is a difference of 20¢ which the full-time worker uses toward expenses. (R. 44) They do not always receive money contributions when the books are placed, as more often the books are left free of charge. (R. 44) They give more books and booklets away free than the number for which contributions are received. (R. 44) The amount of contributions received by each worker runs between \$2 and \$4 per month (R. 45) and the "profit" or differ-

ential on each book placed would be much less than that because of sending in to the Society the amount remitted for each book placed with the public. R. 4, 45.

The expenses for operation run between \$60 and \$85 per month, which includes cost of books given away and those for which contributions are received. (R 48) The difference between income and outgo is taken from reserve fund which the witness, Hessler, had before going into the work. (R. 49) In the case of the part-time worker who usually had secular employment during the week to support himself the literature is provided by the Society at less than cost price of publication or 20¢ each book. The books are received by the part-time publisher from his local company or group congregation that receives them directly from the Society. If the part-time publisher receives a contribution of 25¢ for a book he retains a difference of 5¢ which is applied toward his expense of bringing literature to the people and toward the cost of books which he distributes freely to the people. (R. 49-50, 75) Because many books are given away by each part-time publisher or worker and because of the expense in bringing the literature to the people no profit is made by the part-time worker—he also operates at a monetary loss. (R. 49-51; 106-108) A *company* is an organized group or gathering of Jehovah's witnesses numbering from two to two hundred or more. (R. 54) The companies pay the Watchtower Society for each book received the sum of 20¢. R. 49-51, 75.

Because of the great persecution and difficulties experienced by petitioners around Pittsburgh in western Pennsylvania they had organized a non-profit charitable corporation for purpose of operating a Kingdom School to provide suitable education for their children who had

been expelled from public schools because of their refusal to salute any flag, including the American flag. This organization was known as Kingdom Service Association and was used also to finance some of the major legal cases and difficulties in western Pennsylvania, including the Jeannette controversy. (R. 69) The association kept records. (R. 69-71, 78-81) Its income is entirely from voluntary contributions of Jehovah's witnesses. It did not make a profit off of the preaching activity and received no commission or income whatsoever from any books placed by Jehovah's witnesses. R. 69, 75, 79-83, 106-114, 125-129, 133.

The books of one of the *companies* or local congregations were produced in court. It contained a record of the books placed with each member of the local congregation by the local office. The figures for one month demonstrate the account. The book account showed \$398.14 total for the month including a carry-over of \$142.42 from the month before with \$237.91 disbursements for that month. Another month shows a total at the end of month of \$484.81 including a \$162.73 carry-over from the previous month. (R. 116-121) The local *company* was required to pay for telephone rental and for rental of a hall in the amount of \$100 per month not shown in the above account. (R. 120) No individual receives a profit or salary from the work. The *company* pays the Society 20¢ each for books received (R. 121), and charges each member of the *company* 22¢ each; the difference between which, 2¢, was used for partial payment of the damage, shipping and deterioration of the books, etc. (R. 121, 123-125) The *company* owes the Watch Tower Bible & Tract Society a balance of \$1300 for books. (R. 125-128) The amount of money received each month for books does

not take care of the operating costs, rent, telephone, etc., which deficit is taken care of by voluntary contributions of members of the company. (R. 126) The inventory taken showed \$520 worth of books on hand and a large account receivable from various members for books placed to Jehovah's witnesses in the company. R. 128-129.

Hessler also testified that the reason Jehovah's witnesses did not apply for a license or pay the peddler's tax required under the ordinance was because they were not peddlers but ministers of Jehovah God doing this work in obedience to His explicit command, and for them to ask for a permit to do what Jehovah has commanded would be an insult to the Creator, as His law is supreme and above all human law. R. 39.

History of Proceedings and Federal Questions Raised Below

In the complaint for injunction petitioners alleged that the ordinance as construed and applied was unconstitutional because of abridging their rights of freedom of press and of worship of ALMIGHTY GOD. (R. 9) See particularly paragraph seventeen of the complaint. (R. 11) It was alleged that they were deprived of their rights without due process of law and in violation of the Civil Rights Act of 1871. (R. 3, 10) The answer denied that the ordinance had been unconstitutionally applied and denied that the petitioners had been deprived of any rights contrary to the Federal Constitution. (R. 20) The trial court considered the federal questions properly presented and held that the ordinance had been applied in such a manner as to violate the Federal Constitution. (R. 137, 142) The United States Circuit

Court of Appeals held that the federal questions had been properly raised and presented, both in the trial court and in said appellate court, and held that the ordinance was constitutional. (R. 160, 161, 163)

Specification of Errors to be Urged

The United States Circuit Court of Appeals for the Third Circuit committed reversible error in reversing the judgment of the United States District Court and ordering the complaint dismissed because the court should have held that the ordinance in question, as construed and applied to petitioners, is violative of the United States Constitution, in that it abridges and unduly burdens, by taxation, petitioners' rights of freedom of speech and of press and freedom to worship ALMIGHTY GOD as by Him commanded in the Scriptures and according to dictates of conscience, all contrary to the First and Fourteenth Amendments to the United States Constitution.

ARGUMENT

This Court should hold that the ordinance is void and unconstitutional as construed and applied to petitioners' activity because it abridges and unduly burdens by taxation the exercise by petitioners of their rights of freedom of speech, press and worship of ALMIGHTY GOD, as His ministers preaching from house to house, contrary to the First and Fourteenth Amendments to the United States Constitution.

The constitutionality of this same ordinance has been fully discussed in the petitioners' brief filed in the cases of *Murdock, et al. v. Commonwealth*, Nos. 480 to 487, October Term 1942, pending in this Court. Here we refer to argument in that brief and hereby adopt it as a part hereof as though set forth at length herein.

It is noticed that the greater part of the opinion of the Circuit Court of Appeals relates to sufficiency of the allegations of the complaint to confer jurisdiction upon the district court. On this point the Circuit Court of Appeals ruled in favor of petitioners and held that the allegations conferred jurisdiction. Respondents failed to file a *cross petition* for writ of certiorari, and in the absence of such, are not entitled to be heard in opposition to the parts of the opinion and decision which are adverse to them. In such circumstance the general rule of this Court is that consideration of the case will be confined to an examination of errors asserted by petitioner where respondent has failed to present a *cross petition* for certiorari. *Alexander v. Cosden Pipe Line Co.*, 290 U. S. 484, 487; *Langnes v. Green*, 282 U. S. 531, 536-538; *Hubbard v. Tod*, 171 U. S. 474, 494; *United States v.*

Henry Prentiss & Co., 288 U. S. 73, 88. Hence petitioners devote no time to a discussion of the question as to whether or not the District Court had jurisdiction.

CONCLUSION

For the reasons discussed, it is manifest that the judgment of the Court below should be reversed and the judgment of the District Court affirmed.

Respectfully and confidently submitted,

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